

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

DAVID M. DENNING, *et al.*,

v.

Plaintiffs,

DEPARTMENT OF THE TREASURY, *et  
al.*,

Defendants.

Case No. 3:23-cv-00149-ART-CLB

ORDER

Plaintiffs David M. Denning and Valerie Denning bring this case against the Department of the Treasury, the Internal Revenue Service, and the United States of America, alleging Defendants owe them more than \$150,000 in overpaid taxes. Before the Court is Defendants' Motion to Dismiss (ECF No. 12), which argues that this Court lacks subject matter jurisdiction over Plaintiffs' claims, that their claims are otherwise non-meritorious, and that Plaintiffs have failed to properly serve Defendants. As detailed below, this Court concludes that it does not have jurisdiction over this case and grants Defendants' motion.

### I. BACKGROUND

Between 2015 and 2018, Plaintiffs reported to the IRS that they received combined annual incomes ranging from \$126,000 to \$220,000. (ECF No. 1-2 at 2, 11, 21, 25.) In 2019, they decided that this money, which they received from their employers, did not constitute "income" subject to federal income tax. (*See* ECF Nos. 1 at 6; 16 at 7.) They then filed amended income tax returns (1040Xs), which claimed their combined annual income fell between \$2,175 (2015) and \$0 (2016, 2017, and 2018). (ECF No. 1-2 at 2, 11, 21, 25.) In 2019 and 2020, they again claimed incomes of \$0, this time directly on their joint income tax returns. (*Id.* at 33, 36.) These amounts directly conflict with the information on their W-2s, which the IRS received from their employers. (*See id.* at 35, 38.)

1 Plaintiffs then filed a Complaint (ECF No. 1) with this Court, seeking  
 2 remuneration of \$153,416, which is the amount they claim to have overpaid in  
 3 taxes between 2015 and 2020, plus interest. Defendants responded by filing a  
 4 Motion to Dismiss (ECF No. 12), which is the subject of this Order.

5 **II. LEGAL STANDARD**

6 A motion to dismiss under Fed. R. Civ. P. 12(b)(1) challenges the validity of  
 7 a legal claim based on a federal court's lack of subject matter  
 8 jurisdiction. *See Fed. R. Civ. P. 12(b)(1)*. In cases against the United States, the  
 9 government enjoys sovereign immunity from lawsuits "save as it consents to be  
 10 sued . . . and the terms of its consent to be sued in any court define that court's  
 11 jurisdiction to entertain the suit." *United States v. Testan*, 424 U.S. 392, 399  
 12 (1976). Because a waiver of sovereign immunity creates subject matter  
 13 jurisdiction, when a claim exceeds the scope of the government's waiver of  
 14 sovereign immunity, "the court lacks subject matter jurisdiction," and the claim  
 15 must be dismissed under Fed. R. Civ. P. 12(b)(1). *Morales v. United States*, 895  
 16 F.3d 708, 713 (9th Cir. 2018). Any waiver of sovereign immunity "is to be strictly  
 17 construed, in terms of its scope, in favor of the sovereign." *Department of Army v.*  
 18 *Blue Fox, Inc.*, 525 U.S. 255, 261 (1999). The party asserting claims in federal  
 19 court bears the burden of demonstrating the court's jurisdiction over those  
 20 claims. *See In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546  
 21 F.3d 981, 984 (9th Cir. 2008).

22 **III. DISCUSSION**

23 Because this motion can be resolved on jurisdictional grounds, the Court  
 24 does not reach Defendants' arguments related to service or sufficiency of the  
 25 pleadings.

26 Defendants argue that this Court lacks subject matter jurisdiction over  
 27 Plaintiffs' claims because Plaintiffs have failed to exhaust their administrative  
 28 remedies before bringing their case in federal court, as required by 26 U.S.C. §

1 7422(a). Plaintiffs respond that they exhausted their administrative remedies  
2 when they filed valid tax returns and 1040X forms, which constitute “claims for  
3 credit or refund” under § 7422(a) and therefore satisfy § 7422(a)’s exhaustion  
4 requirement. Plaintiffs also point to a Letter of Disallowance from the IRS, (ECF  
5 No. 16-1 at 3-5) which they believe constitutes an independent waiver of  
6 sovereign immunity.

7 Congress has waived the U.S.’s immunity from civil actions seeking to  
8 recover erroneously assessed taxes. 28 U.S.C. § 1346(a)(1). To fall within the  
9 scope of this waiver and sue in federal court, plaintiffs must first exhaust their  
10 administrative remedies by filing “a claim for refund or credit.” 26 U.S.C. §  
11 7422(a). Income tax returns and amended income tax returns, such as the ones  
12 Plaintiffs filed between 2015 and 2020, may constitute claims for refund or credit,  
13 but only if they comply with applicable regulations. 26 C.F.R. § 301.6402-3(a)(5);  
14 26 U.S.C. § 7422(a) (to establish federal jurisdiction, claims must comply with  
15 applicable “provisions of law . . . and . . . regulations”). Specifically, Plaintiffs’  
16 claims must be “properly executed” and must “set forth in detail each ground  
17 upon which a credit or refund is claimed and facts sufficient to appraise the  
18 Commissioner of the exact basis thereof.” 26 C.F.R. §§ 301.6402-3(a)(5);  
19 301.6402-2(b)(1). If Plaintiffs cannot demonstrate this, their claims “will not be  
20 considered for any purpose as [claims] for refund or credit” and they will not be  
21 entitled to sue in federal court. 26 C.F.R. § 301.6402-2(b)(1).

22 Many courts have held that “forms that lack essential information—  
23 particularly, forms that are replete with zeros in place of a taxpayer’s income—  
24 are not tax returns within the meaning of the Internal Revenue Code and thus  
25 cannot serve as a basis for a tax refund suit.” *Waltner v. United States*, 679 F.3d  
26 1329, 1334 (Fed. Cir. 2012); *see, e.g., Kehmeier v. United States*, 95 Fed.Cl. 442,  
27 445 (2010) (“tax returns reporting zero wages cannot serve as claims for refund  
28 because they fail to include information upon which a tax could be

1 calculated."); *Hamzik v. United States*, 64 Fed.Cl. 766, 768 (2005) ("Plaintiff's  
 2 Form 1040 is replete with zeros in response to most inquiries—except the amount  
 3 of tax withheld and refund claimed—and thus failed to include any reliable  
 4 information upon which the IRS could accurately calculate his taxes, or the  
 5 amount of taxes he owed or had overpaid.... [and] under no circumstances can it  
 6 be rationally construed as a return.") (internal quotation marks omitted);  
 7 *Maruska v. United States*, 77 F. Supp. 2d 1035, 1039 (D. Minn. 1999) ("The  
 8 Plaintiffs' return, replete with zeros in responses to all inquiries—except the  
 9 amount of refund claimed—and containing no recitation of the Plaintiffs' wages  
 10 or other income, is not a return for purposes of the tax laws."); *Ruble v. U.S. Gov.  
 11 Dep't of Treasury*, 159 F. Supp. 2d 1381, 1383-84 (N.D. GA 2001) (because  
 12 plaintiff's tax returns and amended tax returns included "a zero for her adjusted  
 13 gross income, taxable income, and tax liability," they were "not properly executed  
 14 tax returns that could constitute a refund claim.").

15 Here, Plaintiffs have (1) submitted amended individual income tax returns  
 16 that replace the hundreds of thousands of dollars they claimed in income with  
 17 \$0, with no apparent explanation; (2) submitted tax returns that claim \$0 of  
 18 income, directly contradicting the information in their W-2s. (ECF No. 1-2 at 2,  
 19 11, 21, 25, 33, 35, 36, 38.) Their filings, like the filings in the above-cited cases,  
 20 provide bare, unsupported, and directly contradicted claims about their income,  
 21 from which no accurate tax calculation can be drawn. Plaintiffs' filings do not  
 22 comply with 26 C.F.R. § 301.6402-2(b)(1)'s directive that a claim "set forth in  
 23 detail each ground upon which a credit or refund is claimed and facts sufficient  
 24 to appraise the Commissioner of the exact basis thereof," nor can they be  
 25 considered "properly executed," in compliance with 26 C.F.R. § 301.6402-3(a)(5).  
 26 "It is not enough for a form to contain some income information; there must also  
 27 be an honest and reasonable intent to supply the information required by the tax  
 28 code." *Waltner*, 679 F.3d at 1334 (citing *United States v. Moore*, 627 F.2d 830,

1 835 (7th Cir. 1980); *Florsheim Bros. Drygoods Co. v. United States*, 280 U.S. 453,  
 2 462 (1930); *Zellerbach Paper Co. v. Helvering*, 293 U.S. 172, 180 (1934)).

3 Plaintiffs cite *United States v. Long* for the proposition that “a return  
 4 containing zeros on most of [its] lines and signed by the taxpayer without  
 5 modifications” constitutes a valid return under Ninth Circuit precedent. (ECF No.  
 6 16 at 6, citing *United States v. Long*, 618 F.2d 74 (9th Cir. 1980)). *Long* concerned  
 7 a tax protestor who submitted tax forms containing zeros in the spaces reserved  
 8 for “income, tax, and tax withheld” and was subsequently convicted for willful  
 9 failure to file income tax returns under a criminal statute (26 U.S.C. § 7203) that  
 10 is not at issue here. In *Long*, the Ninth Circuit ultimately held that the  
 11 government, which had destroyed the defendant’s tax records, had failed to prove  
 12 the elements of the offense. *Long*, 618 F.2d at 76. *Long* says nothing about §  
 13 7422(a), federal jurisdiction, or the waiver of sovereign immunity. It is inapposite  
 14 to the present case and provides no basis for establishing federal jurisdiction over  
 15 Plaintiffs’ claims.

16 Plaintiffs also suggest that their Letter of Disallowance provides an  
 17 independent basis for this Court’s subject matter jurisdiction, but this is  
 18 incorrect. (ECF No. 16 at 6.) The IRS does not have the power to waive the United  
 19 States’ sovereign immunity. The power to waive federal sovereign immunity lies  
 20 with Congress alone. *Block v. North Dakota*, 461 U.S. 273, 281 (1983). Absent  
 21 such a waiver, suits against the United States cannot progress in federal court.  
 22 The question before the Court is whether the scope of Congress’s waiver of  
 23 sovereign immunity covers the situation in which Plaintiffs find themselves. It  
 24 does not.

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1           **IV. CONCLUSION**

2           It is therefore ordered that Defendants' Motion to Dismiss (ECF No. 12) is  
3 granted.

4           It is further ordered that Plaintiffs' Complaint (ECF No. 1) is dismissed.

5           The Court Clerk is directed to enter judgment accordingly and close this  
6 case.

7           Dated this 18<sup>th</sup> day of January 2024.

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11           ANNE R. TRAUM  
12           UNITED STATES DISTRICT JUDGE

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